

WETLANDS COUNCIL

MINUTES

November 10, 2015

The Wetlands Council met on Tuesday, November 10, 2015 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Ryan Crosbie, Carol Henderson, James Kennedy, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, and Robert Snelling, and Bob Wolff

Absentees: Councilor: Susan Slack

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:02 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Wolff made a motion to accept the October 13, 2015 minutes as written, second by Councilor Snelling. Motion passed unanimously with Councilor Henderson abstaining.***

2. **Public Input:** None

4. **New Business**

Lori Sommer, Wetlands Bureau Mitigation Coordinator

Lori presented the 2015 ARM Fund report. There were 9 service areas with 36 pre-proposals received in March. 17 full applications were then received in August. 5 days of site visits were conducted. In October the Site Selection committee met and recommendations were made. One project was deemed ineligible and the committee decided on 13 of the 16 projects. The Army Corps accepted the 13 proposed projects. The Council reviewed the project information and discussed each project individually. The Council's acceptance of each project is as follows:

1. **Androscoggin Service Area**

- ***Councilor Lievens made a motion to approve \$61,000 to the Milan Community Forest to purchase 6.6 acres of land, second by Councilor Crosbie. Motion passed unanimously.***

Salmon Falls- Piscataqua Rivers Service Area

- ***Councilor Snelling made a motion to approve \$190,500 to the Nature Conservancy to restore five acres for the protection/restoration of the oyster reef, second by Councilor Mellor. Motion passed unanimously.***
- ***Councilor Prescott made a motion to approve \$135,000 UNH Jackson Laboratory for a multi-habitat restoration project of mud-flat enhancements in Cutts Cove, Portsmouth, second by Councilor Henderson. Motion passed unanimously.***
- ***Councilor Crosbie made a motion to approve \$148,000 to the Society for the Protection of NH Forests to purchase the Powder Major's farm and Forest/Goss parcel project, second by Councilor Snelling. Motion passed unanimously.***

Merrimack River Service Area

- ***Councilor Kennedy made a motion to approve \$180,000 to the NH Rivers Council for the McQuesten Brook Aquatic Resource Restoration and Connectivity Project, second by Councilor Lievens. Motion passed unanimously.***
- ***Councilor Henderson made a motion to approve \$70,000 to the Piscataquog Land Conservancy for the Black Brook Preserve in Goffstown, second by Councilor Wolff. Motion passed unanimously.***
- ***Councilor Snelling made a motion to approve \$300,000 to the City of Concord for acquisition of two parcels located in the Penacook Lake Watershed, second by Councilor Mellor. Motion passed unanimously.***
- ***Councilor Mellor made a motion to approve \$217,200 to Bear-Paw Regional Greenways for the Wild Goose Pond Project, second by Councilor Crosbie. Motion passed unanimously.***

Lower Connecticut River Service Area

- ***Councilor Henderson made a motion to approve \$362,385 to the Upper Valley Land Trust for acquisition of the Smith Pond Shaker Forest property in Enfield, second by Councilor Mellor. Motion passed unanimously. Councilor Kennedy was recused from this consideration.***
- ***Councilor Wolff made a motion to approve \$147,615 to Monadnock Conservancy and Nature Conservancy to protect 29 acres of flood plain forest on the Ashuelot River in Swanzey, second by Councilor Mellor. Motion passed unanimously.***

Contoocook River Service Area

- ***Councilor Lievens made a motion to approve \$150,000 to the Society for the Protection of NH Forests for the purchase of the 236 acre Brown property in Sutton, second by Councilor Prescott. Motion passed unanimously.***

Middle Connecticut River Service Area

- ***Councilor Kennedy made a motion to approve \$100,000 to the Ammonoosuc Conservation Trust to conserve 203 acres of forest land fronting on the Ammonoosuc River, second by Councilor Crosbie. Motion passed unanimously.***

Upper Connecticut River Service Area

- ***Councilor Crosbie made a motion to approve \$5,000 to Trout Unlimited in partnership with NH Fish and Game and the NH Division of Forest and Lands to complete aquatic restoration work in the Nash Stream watershed, second by Councilor Snelling. Motion passed unanimously. Councilor Henderson was recused from this consideration.***

A break was taken at 10 a.m. and resumed at 10:10 a.m.

Land Resources Management Program Reorganization

Gene Forbes, Water Division Director

Director Forbes first shared the agency's mission. So why the reorganization? To do a better job: simplify, more efficient, greater consistency, better environmental outcomes, attract & retain qualified people, and streamline permit processes. The plan is to go to a 5 region approach for a better understanding of the watersheds within the region. The goal is to submit one application form for 5 different impact types. Engineering will be provided to support all regions. This will build program

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development, support, data management, analysis, rulemaking, and research. Good customer service is important to the Department. We will address training and outreach to the staff and to our constituents.

Final public comments due by November 27, 2015. These will be considered and adjustments made as appropriate. It will then be submitted to Division of Personnel then to the Governor and Council for final approval.

Questions and comments were then received.

It was determined when the integrated permit goes into effect in 2017 and there is an appeal, the Wetlands and Water Council chairmen will choose 4 members from each to hear the appeal.

3. Status Report

I. New Appeals

II. Decisions that need to be written/finalized and issued.

Docket No. 15-03 WtC – Dean DeLaHaye Appeal

Subject: 2/20/2015 approval of permit #2014-00160 issued to The Pointe at Riverfront

Hearing Officer: David Conley, Esq. appointed by AG on 6/18/15

Status: March 20, 2015 received Petition for Appeal. 3/26/15 sent insufficient appeal letter. April 24, 2015 received revised Petition for Appeal. 4/27/15 sent receipt of appeal letter. Council accepted the appeal at the June 9, 2015 meeting. 06/11/15 issued appeal accepted letter. July 13, 2015 issued Pre-hearing Order scheduling hearing for Oct. 13, 2015 at 9 a.m. 7/17/15 received Motion to Amend Appeal. October 5, 2015 issued letter denying Appellant's Motion to Reconsider. Hearing held on October 13, 2015. Council to act on draft Decision and Order at November 10, 2015 meeting.

- ***Councilor Snelling made a motion to adopt the Decision and Order, second by Councilor Mellor. Discussion was held. Motion passed unanimously. Councilor Henderson is recused from vote.***

III. Hearings or PHCs Pending

Docket No. 14-16 WtC – David and Louise Drolet, et al. Appeal

Subject: 11/10/14 permit approval #2014-00246 issued to Green and Company

Hearing Officer: David Conley, Esq. appointed by AG on 3/13/15

Status: 12/10/14 received Notice of Appeal. 12/11/14 issued insufficient appeal letter. 12/24/14 received Amended Notice of Appeal. 12/30/14 issued receipt of appeal letter. Council accepted the appeal at the February 10, 2015 meeting. 2/11/15 issued Appeal accepted letter. 2/20/15 received Appearance from Ari Pollack for permittee. April 17, 2015 issued Notice of scheduled PHC for 4/24/15 at 9 a.m. 4/17/15 received Appearance for Collis Adams. 4/22/15 received Assented-To Motion to Continue. 4/23/15 issued letter granting Motion and rescheduling PHC for 5/13/15 at 11:30 a.m. May 13, 2015 issued Pre-hearing Order scheduling hearing for September 8, 2015 at 9 a.m. 5/15/15 issued Ruling on Validity of Permit Condition. August 6, 2015 received Permit Holder's Witness and exhibit List. 8/13/16 received Assented-To Motion to Continue Final Hearing and Continue Hearing and rescheduling hearing for November 10, 2015 at 9 a.m. 8/20/15 received Partial Objection to Permit Holder's Motion in Limine. 9/25/15 issued Order on Permit Holder's Motion in Limine. October 19, 2015 received Motion to Continue. 10/21/15 received Objection to Appellant's Motion to Continue Hearing. 10/26/15 issued letter granting Motion to Continue and rescheduling hearing for February 9, 2016 at 9 a.m.

Docket No. 15-06 WtC – James and Carol Rust Revocable Trust Appeal

Subject: 4/15/15 denial of permit application #2014-01571

Hearing Officer: David Conley, Esq. appointed by AG on 9/14/15

Actions: May 14, 2015 received Preliminary Notice of Appeal(PNA). June 9, 2015 received Notice of Appeal. 6/10/15 issued receipt of Appeal letter. Council accepted appeal at their September 8, 2015 meeting. 9/10/15 issued appeal accepted letter. 9/24/15 issued Notice of PHC scheduled for 10/19/15 at 9:30 a.m. October 13,

2015 received Appearance of Collis Adams. 10/19/15 issued Pre-Hearing Order with 2nd PHC scheduled for November 4, 2015 at 9 a.m. 11/4/15 issued 2nd Pre-Hearing Order with 3rd PHC scheduled for December 14, 2015 at 9 a.m.

Docket No. 15-10 WtC – Christopher John Krochina Appeal

Subject: 5/11/15 approval of permit #2015-00158 issued to Barbara Ann and Ronald Coburn

Hearing Officer: David Conley, Esq. appointed by AG on 9/14/15

Actions: June 10, 2015 received Petition for Appeal. 6/11/15 issued insufficient appeal letter. July 10, 2015 received Amendment to Petition for Appeal. 7/13/15 issued receipt of Amendment to Petition for Appeal. Not sure of timeliness, depends on what date the Council decides is the date of issuance. Date of Decision (May 9, 2015) or cover letter (May 11, 2015). Council accepted appeal at their September 8, 2015 meeting. 9/10/15 issued appeal accepted letter. 9/25/15 issued Notice of PHC scheduled for 10/19/15 at 10:30 a.m. October 13, 2015 received Appearance of Darlene Forst. 10/15/15 received Appearance of Nicol Roseberry for the permittee. 10/15/15 issued Notice of Rescheduled PHC to November 2, 2015 at 9 a.m. 10/15/15 received Corrected Appearance of Nicol Roseberry. 10/15/15 received Appearance for Ronald Coburn, permittee. 10/26/15 received Appearance of Atty. Christopher Boldt for the permittees. 10/30/15 received Motion to Continue. November 2, 2015 issued Pre-Hearing Order with Hearing scheduled for April 12, 2016 at 9 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action.

Docket No. 14-13 WtC – Ergendino Perrone and Robert Gleason Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo.

Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay.

V. Misc.

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Chairman Kimball questioned the term 'regularly scheduled' in the statute. He will call Atty. Buonanamo as to whether we have to meet in December or if we can have the next meeting in February.

5. **Old Business**

6. **Next Meetings** –

December 8, 2015 at 9:00 a.m. or February 9, 2016 at 8 or 8:30 a.m.

7. **Adjournment**

- ***Councilor Prescott made a motion to adjourn, second by Councilor Lievens. Motion passed unanimously.***

Meeting adjourned at 11:20 a.m.